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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/789,160	02/27/2004	Akira Fukushima	03774/LH	8989
1933	7590	05/18/2006	EXAMINER	
FRISHAUF, HOLTZ, GOODMAN & CHICK, PC 220 Fifth Avenue 16TH Floor NEW YORK, NY 10001-7708			BEACH, THOMAS A	
			ART UNIT	PAPER NUMBER
			3671	

DATE MAILED: 05/18/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)	
	10/789,160	FUKUSHIMA ET AL.	
	Examiner	Art Unit	
	Thomas A. Beach	3671	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE ____ MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) Responsive to communication(s) filed on amendment filed 08/19/05.
- 2a) This action is FINAL. 2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) Claim(s) 1-17 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) Claim(s) _____ is/are allowed.
- 6) Claim(s) 1-17 is/are rejected.
- 7) Claim(s) _____ is/are objected to.
- 8) Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on _____ is/are: a) accepted or b) objected to by the Examiner.
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) All. b) Some * c) None of:
 1. Certified copies of the priority documents have been received.
 2. Certified copies of the priority documents have been received in Application No. _____.
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) Notice of References Cited (PTO-892)
- 2) Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
 Paper No(s)/Mail Date _____
- 4) Interview Summary (PTO-413)
 Paper No(s)/Mail Date. _____ .
- 5) Notice of Informal Patent Application (PTO-152)
- 6) Other: _____.

DETAILED ACTION

Claim Rejections - 35 USC § 102

1. Claims 1-6, 9, 10, and 12 are rejected under 35 U.S.C. 102(b) as being anticipated by JP 09209402. JP '402 shows a crawler frame for a construction machine, the crawler frame including a center frame composed of a central frame section for supporting a swing bearing and legs located on the right and left sides of the central frame section; and track frames disposed on the sides of the distal ends of the legs, respectively, center frame, wherein each sections the legs is bifurcated into front and rear and each leg is formed from cast steel (figures 4 & 6), since all sheets of steel are created from casting.

As concerns claim 2, JP '402 shows each leg has a two-part structure (figure 4).

As concerns claim 3, JP '402 shows a base section of the front leg section is securely welded to a base section of the rear leg section and wherein the base section of each leg at which the front and rear leg sections are integrated with each other is welded to the central frame section (figure 11).

As concerns claim 4, JP '402 shows the entire circumference of the base section of each leg welded to an upper, lower, front and rear face plates (figure 6) welded to the base section around the circumference.

As concerns claim 5, JP '402 shows vertical walls formed from cast steel are provided for the front and rear leg sections so as to be integral with their base sections respectively (figure 11).

As concerns claim 6, JP '402 shows the vertical walls are located substantially immediately under a circular mount for supporting the swing bearing (figures 6 & 11).

As concerns claim 9, JP '402 shows the central frame section has right and left side supporting plates and the base sections of the legs are inserted into and securely welded to the central frame section so as to face the side supporting plates respectively (figures, 7, 9 & 23).

As concerns claim 10, JP '402 shows the side supporting plates are located substantially immediately under a circular mount for supporting the swing bearing (figures, 7, 9 & 23).

As concerns claim 12, JP '402 shows a vertical plate section is formed at the rear end of a base section of the front leg section and at the front end of a base section of the rear leg section and wherein the front and rear leg sections are substantially rectangular cross-section (figures, 7, 9 & 23).

Claim Rejections - 35 USC § 103

2. Claims 7 and 11 are rejected under 35 U.S.C. 103(a) as being unpatentable JP 09209402 over in view of Teria et al 3,920,081. JP '402 discloses a hydraulically power machine but does not show s concerns the vertical walls are respectively provided with a hole through which a hydraulic oil pipe is passed and a lip, or grommet, defining the hole is thickened. However, Teria shows a similar construction machine having vertical walls are respectively provided with a hole 14 through which a hydraulic oil pipe 8 is passed and a lip 4, or grommet, defining the hole is thickened. Therefore, it would have

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been obvious to one of ordinary skill in the art at the time the invention was made to modify JP '402, as taught by Teria, to include means to allow hydraulic lines be connected through the frame in such a way that prevents damage to the lines during installation and use of the machine.

3. Claims 8 and 13-17 are rejected under 35 U.S.C. 103(a) as being unpatentable JP 09209402 over in view of Sasaki et al 6,637,111. JP '402 shows the upper and lower face plates of the central frame section are joined by welds and the surfaces the upper and lower face plates are flush with the upper and lower faces, respectively, of the leg, but does not specifically show a J groove weld. However, Sasaki shows a similar construction machine where a J groove weld 55/54 is utilized to connect plates to form the base section (figures 12-13). Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify JP '402, as taught by Sasaki, to include J groove weld to provide a strong connection between plates that are being welded together (col. 8, lines 63-67 & col. 9, lines 1-7).

Response to Arguments

4. Applicant's arguments filed 08/19/05 have been fully considered but they are not persuasive. Applicant's arguments regarding that the claim language of casting steel elements does not obviate the art since even the sheet of steel welded together to create the frame would be considered to have been formed of casted steel since the sheets are originally casted. Furthermore, the method of construction does not result in

a structural difference thus is not considered patentable distinct in the art of excavator frames since both method of welding together and casting are commonly used.

Conclusion

5. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

6. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Thomas A. Beach whose telephone number is 571.272.6988. The examiner can normally be reached on Monday-Friday, 8:00am-5:00pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Thomas Will can be reached on 571.272.6998. The fax phone number for the organization where this application or proceeding is assigned is 571.273.8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Thomas A. Beach

May 15, 2006

THOMAS A. BEACH
Primary Examiner
Group 3600